

§ 802.40

the trustee of the trust. That trust then acquires 30% of the voting securities of Company A for in excess of \$50 million (as adjusted). Later, the trust acquires 20% of the stock of Company B, a wholly-owned subsidiary of Company A, for in excess of \$50 million (as adjusted). Neither acquisition is reportable.

2. Assume that in the example above, "A" has total assets of \$100 million (as adjusted). "C" also has total assets of \$100 million (as adjusted) and is not controlled by Company A. The trust controlled by Company A plans to acquire 40 percent of the voting securities of Company C for in excess of \$50 million (as adjusted). Since Company C is not included within "A," "A" must observe the requirements of the act before the trust makes the acquisition of Company C's shares.

[52 FR 7082, Mar. 6, 1987, as amended at 66 FR 8694, Feb. 1, 2001; 70 FR 4995, Jan. 31, 2005]

§ 802.40 Exempt formation of corporations or unincorporated entities.

The formation of an entity is exempt from the requirements of the Act if the entity will be not-for-profit within the meaning of sections 501(c)(1)–(4), (6)–(15), (17)–(20) or (d) of the Internal Revenue Code.

[70 FR 11514, Mar. 8, 2005]

§ 802.41 Corporations or unincorporated entities at time of formation.

Whenever any person(s) contributing to the formation of an entity are subject to the requirements of the Act by reason of § 801.40 or § 801.50 of this chapter, the new entity need not file the notification required by the Act and § 803.1 of this chapter.

Examples: 1. Corporations A and B, each having sales of in excess of \$100 million (as adjusted), each propose to contribute in excess of \$50 million (as adjusted) in cash in exchange for 50 percent of the voting securities of a new corporation, N. Under this section, the new corporation need not file notification, although both "A" and "B" must do so and observe the waiting period prior to receiving any voting securities of N.

2. In addition to the facts in Example 1 of this section, A and B have agreed that upon creation N will purchase 100 percent of the voting securities of corporation C for in excess of \$50 million (as adjusted). Because N's purchase of C is not a transaction in connection with N's formation, and because in any event C is not a contributor to the formation of N, "A," "B" and "C" must file with re-

16 CFR Ch. I (1–1–06 Edition)

spect to the proposed acquisition of C and must observe the waiting period.

[43 FR 33544, July 31, 1978, as amended at 52 FR 7082, Mar. 6, 1987; 70 FR 4995, Jan. 31, 2005; 70 FR 11514, Mar. 8, 2005]

§ 802.42 Partial exemption for acquisitions in connection with the formation of certain joint ventures or other corporations.

(a) Whenever one or more of the contributors in the formation of a joint venture or other corporation which otherwise would be subject to the requirements of the act by reason of § 801.40 are exempt from these requirements under section 7A(c)(8), any other contributor in the formation which is subject to the act and not exempt under section 7A(c)(8) need not file a Notification and Report Form, provided that no less than 30 days prior to the date of consummation any such contributor claiming this exemption has submitted an affidavit to the Federal Trade Commission and to the Assistant Attorney General stating its good faith intention to make the proposed acquisition and asserting the applicability of this exemption.

(b) Persons relieved of the requirement to file a Notification and Report Form pursuant to paragraph (a) of this section remain subject to all other provisions of the act and these rules.

[48 FR 34436, July 29, 1983]

§ 802.50 Acquisitions of foreign assets.

(a) The acquisition of assets located outside the United States shall be exempt from the requirements of the act unless the foreign assets the acquiring person would hold as a result of the acquisition generated sales in or into the U.S. exceeding \$50 million (as adjusted) during the acquired person's most recent fiscal year.

(b) Where the foreign assets being acquired exceed the threshold in paragraph (a) of this section, the acquisition nevertheless shall be exempt where:

(1) Both acquiring and acquired persons are foreign;

(2) The aggregate sales of the acquiring and acquired persons in or into the United States are less than \$110 million (as adjusted) in their respective most recent fiscal years;